

**STATEMENT OF  
THE HONORABLE JAMES L. OBERSTAR  
FULL COMMITTEE HEARING ON  
“NATIONAL MEDIATION BOARD OVERSIGHT OF ELECTIONS FOR UNION REPRESENTATION”  
SEPTEMBER 24, 2008**

Today, the Committee will evaluate the rules and procedures of the National Mediation Board (NMB) in its oversight of elections for union representation. There are several important issues that we will discuss today, with important implications for the rights of aviation workers to bargain collectively.

The National Mediation Board was established in 1934 as an independent Federal agency charged with overseeing labor-management relations in the aviation and rail industries. The NMB administers the specific terms of the Railway Labor Act (“RLA”), the Federal statute governing the representation of workers and mediation and arbitration of collective bargaining and other disputes in these industries.

When Congress passed the RLA in 1926, it set forth very clear purposes for the Act: “to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization”, and to maintain smooth labor-management relations to avoid interruption to commerce or to the operation of a carrier.

In establishing the rules to implement this labor law, the NMB has set a high bar for workers to secure the representation of a union. In an NMB election, a majority of workers in a given craft or class eligible to vote in an election must participate in an election. Every employee eligible to vote starts off the election as a presumed vote against representation - those who do not vote are counted as votes against the union. If a majority of all eligible employees do not vote, it is not possible for a union to win the election, even if all employees voting choose representation.

This process differs from the rules applicable to workers governed by the National Labor Relations Act (NLRA), where a simple majority of the votes cast determines the outcome of the election.

Given the high bar set for a union to organize workers under the RLA, we must be especially vigilant to ensure that elections are conducted under a clear set of rules to ensure that workers are not turned against a union by misrepresentation or coercive practices by management, and that the rules for an election are uniformly applied and strictly enforced.

The testimony of Patricia Friend, President of the Association of Flight Attendants-CWA, will reveal a number of issues in the union's recent campaign to

organize flight attendants at Delta Airlines that raise questions about existing NMB rules governing representation elections.

These include decisions by the NMB to allow over 1,700 furloughed flight attendants and those who intend to retire shortly after the election from the carrier to remain eligible to vote in the election. The NMB standard is that any worker with an existing “employee-employer relationship” at the time the union files for a representation election is eligible to vote.

I question how strongly these workers, particularly those who have voluntarily removed themselves from active employment, are motivated to vote on issues affecting worker-company relations. If these workers remain eligible but do not vote in the election, their absence automatically counts as a vote against the union.

The NMB also determined that a deceased flight attendant should not be removed from the eligibility list because the request was not made in a timely manner and without the proper supporting documentation. Because deceased flight attendant Janette Wood was not removed from the list, she ended up voting “no” in the election.

Recent actions by the NMB also raise questions whether there is any requirement that NMB strictly adheres to its rules. Last year, when AFA filed for a representation

election at Compass Airlines, a small subsidiary of Northwest Airlines, the NMB pushed back the cut-off date for the election by nearly three months, citing extraordinary circumstances. The circumstances in this case were that Compass Airlines planned to ramp up hiring over the next several years. The delay in the date of the election allowed additional flight attendants to be added to the eligibility list.

Just last month, the Board attempted to revise its rules in a way that may have made it harder for workers to retain their union membership in the event of a merger. This further highlights the ability of the NMB to alter the playing field in representation elections through small procedural changes. I am pleased that the NMB has decided to drop this proposal in the face of strong opposition.

The testimony we will hear today also raises questions about the sentiment among the leadership of Delta Airlines against unionization, and the implications for flight attendants currently represented by AFA at Northwest Airlines who may soon become employees of a “new Delta” if the proposed merger is approved by the Department of Justice.

Workers must retain their right to choose representation through a union, without interference by a carrier, as has been set forth in the Railway Labor Act since 1934. Any

attempts to diminish this right, by administrative actions of the NMB, or by election tactics of anti-union companies, will face careful scrutiny by this Committee.

I thank each of the witnesses for taking the time to be with us today and I look forward to your testimony.